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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of SHAWN WOODALL and JANICE TEETER.	
SHAWN WOODALL, Appellant, v. JANICE TEETER, Respondent.	D052904 (Super. Ct. No. D502072)

APPEAL from a judgment of the Superior Court of San Diego County, Thomas C. Hendrix, Judge. Affirmed.

In propria persona appellant husband Shawn Woodall appeals from the judgment entered March 18, 2008, granting respondent wife, Janice Teeter, dissolution of their short-term marriage. When Woodall filed this instant appeal, he had pending in this court an appeal from an order denying his motion for child custody and visitation rights with

Teeter's minor child, his stepchild, under Family Code[1] section 3101, subdivision (a) in case no. D051460.[2]

On October 7, 2008, we filed our unpublished opinion in case no. D051460, concluding that Woodall, who had been an indigent prisoner in San Diego County Jail awaiting trial on criminal charges when he initially filed his petition for legal separation, had "not shown any abuse of discretion or conceivable 'miscarriage of justice' by the court's failure to order his presence for the hearing on his section 3101 motion for custody and stepparent visitation or in its denial." In doing so, we addressed numerous issues raised by Woodall concerning his due process rights to access the court, either through ordered appearance or appointment of counsel to represent him in the family law matter, and found the record did not reflect that Woodall had been denied the opportunity to provide his position and support for his motion for the child custody and visitation issues then on appeal.

Now, in addition to claiming the trial court abused its discretion when it failed to either order him to be produced for the dissolution trial or to appoint counsel for him for that trial, Woodall again raises many of the same due process and access to the court

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1 All statutory references are to the Family Code unless otherwise specified.

2 We grant Woodall's unopposed request in his opening brief to "see," i.e., take judicial notice of, the record in *Woodall v. Teeter* (Oct. 7, 2008, D051460) [nonpub. opn.]. However, we deny his unopposed request to take judicial notice of his criminal appeal in *People v. Woodall* (July 9, 2008, D052228 [nonpub. opn.] and his pending unopposed request to take judicial notice of the augmented record related to the appeal in case no. D051460. These latter requests are not relevant to the matters properly before this court on this present appeal. (See Evid. Code, §§ 452, 459, subd. (a); *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1089, fn. 4.)

issues regarding the child custody and visitation proceedings that we resolved against him on his first appeal in case no. D051460. Woodall also asserts that the trial court lacked jurisdiction to enter an order attempting to alter or amend the child custody and visitation order, which was already before us on appeal, and appears to claim that the court erred in entering a default judgment for dissolution of his marriage to Teeter without addressing the contested issues regarding custody and visitation and in granting relief different from that which he requested in his petition for legal separation. Teeter has filed no responsive pleadings.

After a review of the record, our determination in case no. D051460, and Woodall's opening brief (see Cal. Rules of Court, rule 8.220(a)(2)), we conclude Woodall has again failed to show any abuse of discretion or miscarriage of justice and affirm.

FACTUAL AND PROCEDURAL SUMMARY

As we noted in case no. D051460, the record reveals that Woodall and Teeter had met at a halfway house in San Diego in January 2006, had married on March 23, 2006, and Woodall had filed a petition on March 7, 2007, for legal separation from that marriage, which he claimed lasted four and a half months, citing irreconcilable differences. In his petition, Woodall also requested joint legal custody of and visitation with Teeter's three-year-old daughter, and that child support be granted to Teeter "to commence upon [his] release from incarceration."

In response, Teeter, also in propria persona, requested dissolution of the couple's two-month marriage due to irreconcilable differences and claimed there was no minor child of that marriage, only a three-year-old daughter living with her.

On June 5, 2007, Woodall filed his motion and supporting documents for visitation rights with Teeter's minor child under section 3101, subdivision (a) and incorporated a request for de facto parental determination. In addition to listing in support his various educational accomplishments, both in and out of federal and state custody, he explained his current sobriety was essentially due to his stepdaughter giving him "the impetus to turn [his] life around again" after relapsing because of his mother's unexpected death, which led to his pending state drug charges.

Teeter filed responsive pleadings objecting to any order that permitted Woodall custody or visitation with her daughter. Besides noting that Woodall was not her child's biological father and had only spent about eight hours with the child during their marriage, Teeter claimed custody or visitation "is not in the best interests of the minor child."

On June 27, 2007, the parties participated, Teeter in person and Woodall by telephone from jail, in a "pre-OSC mediation conference" with a Family Court Services (FCS) counselor regarding the matter of child custody and visitation of Teeter's minor child. Afterwards, the FCS counselor submitted a six-page parenting plan to the court basically noting that the minor child's biological father had been determined in a 2004 child support determination between the biological father and Teeter, and outlining in neutral fashion the information received from Woodall and Teeter regarding their short marriage and their separate views on the child custody/visitation matter before the court. Based on all the information, which was fully set out in case no. D051460 and we do not

repeat here, the FCS counselor recommended that Woodall's request for visitation with the minor child be denied.

On July 23, 2007, the trial court denied Woodall's motions for custody/visitation of Teeter's minor child and filed a formal order of denial on July 27, 2007. Woodall filed a notice of appeal from the denial on July 31, 2007. While that appeal was pending in this court, Woodall filed a motion with supporting documents in the trial court August 16, 2007, for modification of child custody, requesting personal appearance or appointment of counsel and essentially asking for reconsideration of the trial court's July 27, 2007 order denying his earlier custody/visitation motions.

On September 18, 2007, the trial court denied the motion, making additional orders, including one denying Woodall's request that Teeter provide her daughter with "any pictures, letters or information that he provides," another denying his motion to appoint an attorney because this was not a criminal matter and paternity of the child had already been established in another case contrary to Woodall's claim, and again denying his request for custody and visitation with Teeter's minor child under section 3101. In making this latter order, the court specifically found that the parties had only been together for a short time, Woodall was currently incarcerated and the best interest of the child "is that [Woodall] shall [not have] visitation."

A case classification conference set for September 24, 2007 was continued by the court to February 4, 2008, with the notation that Woodall was still in jail but should be out at the next case classification conference date. Before that date, however, on November 20, 2007, Woodall filed a notice of motion and motion for voluntary dismissal

of the action under Code of Civil Procedure section 581, subdivision (c), stating he "has no further interest in the prosecution of the case" and was seeking dismissal with prejudice "due to the Due Process and Equal Protection violations that have occurred."

The record provided does not reflect what action was taken regarding Woodall's dismissal motion or what occurred at the September 24, 2007 case classification conference. It merely reflects that on February 8, 2008, the parties were provided notice of trial on March 18, 2008 at 1:45 p.m.; that Woodall filed a request March 13, 2008, for an order for removal of prisoner to the San Diego County Sheriff's custody for the March 18 hearing; and that he filed a motion March 17, 2008 to stay the proceedings in this case pending appeal in case no. D051460, to stay the proceedings pending his release from imprisonment, or alternatively, to order the sheriff to produce him for the March 18, 2008 trial date.

On March 18, 2008, the trial court entered a judgment of dissolution, noting the proceeding was heard by way of "default or uncontested" and that the court had acquired jurisdiction of Teeter on April 6, 2007. In addition to dissolving the marriage, the judgment also ordered that spousal support was terminated as to both parties and confirmed to each party their separate property and debts. Notice of entry of judgment was filed and sent to each party on March 19, 2008. Woodall timely appealed from the judgment "granting dissolution of marriage by default or uncontested . . . ."

DISCUSSION

In appealing from the judgment of dissolution in this case, Woodall has essentially raised due process and child custody/visitation issues that have already been raised and

rejected in his first appeal in case no. D051460, and has challenged the trial court's jurisdiction to make orders after that earlier matter was on appeal and its discretion to enter a judgment of dissolution, which he characterizes as a default judgment that failed to address all his contested child custody/visitation issues. We conclude Woodall's assertions on this appeal have either been resolved against him or have no merit.

At the outset, we note that Woodall's characterization of the judgment of dissolution entered as a default judgment is erroneous. Although the court did check the box on the standardized form for judgment of dissolution to reflect that the proceeding was heard as "default or uncontested," the record shows that Teeter filed responsive pleadings to Woodall's original petition for legal separation, checking the box to indicate she was requesting dissolution of the marriage. When she did so, the trial court was fully conferred with subject matter, "in rem" and personal jurisdiction over the parties to the marriage and had authority to grant any relief regarding its status and the rights and obligations arising out of the union that either party had requested. (§ 2010; see *Sosnick v. Sosnick* (1999) 71 Cal.App.4th 1335, 1339; Cal. Practice Guide: Family Law (The Rutter Group 2008) [¶] 3:284, p. 3-99.) Only if Teeter had failed to appear and file a responsive pleading in this case, would the matter be a default (see Code Civ. Proc., § 1014; Cal. Rules of Court, rule 5.120(a)) and the trial court precluded from granting a dissolution rather than a legal separation as requested by Woodall. (See *Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 862-864.)

Further, once Woodall was aware of Teeter's responsive papers, he was put on notice of the specific relief she was requesting as to their marital status, satisfying due

process and notice requirements for such relief. (See *In re Marriage of Andresen* (1994) 28 Cal.App.4th 873, 878-879.) Because Woodall's subsequent nonappearance at the trial after proper notice of the trial date rendered it one that was uncontested rather than a default and the trial court had jurisdiction to dissolve the marriage between Woodall and Teeter, no abuse of discretion or jurisdictional error can be shown by entry of the judgment of dissolution in this case.

To the extent Woodall claims the dissolution judgment must be set aside because the trial court violated his due process rights by failing to provide him, an indigent prisoner, with appointed counsel or an order to produce him from prison for the trial, such claim fails. As we noted in Woodall's earlier appeal in case no. D051460, indigent prisoners ordinarily have no constitutional right to appear personally in civil matters (*Payne v. Superior Court* (1976) 17 Cal.3d 908, 920), and "the right of an indigent prisoner to appointed counsel in a civil action arises only when there is a bona fide threat to his or her personal or property interests and no other feasible alternative exists. [Citations.]" (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 793-794.) Because the parties did not have any community property to divide or any conflicts regarding their separate property and debts, Woodall did not face any "bona fide threat" to his property interests at trial.

As to his claimed personal interests in Teeter's minor child, those issues, concerning child custody/stepparent visitation and due process access to the court on those matters, were separately addressed and rejected by the trial court and then by this court on Woodall's appeal in case no. D051460. We do not address those issues again,

which constitute the bulk of Woodall's current appeal.[3] (See *Bovard v. American Horse Enterprises, Inc.* (1988) 201 Cal.App.3d 832, 841-842.)

Moreover, in addition to having filed his petition and other documents expressing his views on his property and marital status, Woodall had filed a voluntary dismissal before the trial date. Even though such was invalid to dismiss his family law proceeding because Teeter had already responded to his petition seeking affirmative relief (*In re Marriage of Tamraz* (1994) 24 Cal.App.4th 1740, 1747-1748), Woodall's request provides some evidence that he no longer was interested in pursuing his case for legal separation. Under such circumstance, Woodall is hard-pressed to show that he was somehow denied due process or prejudiced by the court then proceeding to trial in his absence on the marital status and property issues remaining in the case based on the pleadings then before the court. Because the trial did not involve the termination of parental rights "brought under Part 4 (commencing with Section 7800) of Division 12 of the Family Code. . ." (Pen. Code, § 2625, subds. (b), (d) & (e)), Woodall did not have an absolute right for an order to be produced at trial as he contends. Thus, the court's denials of his requests to be produced for the trial or for appointment of counsel for the trial do not show either an abuse of discretion or a violation of his due process rights. Woodall simply fails to recognize that California has a no-fault dissolution policy such that either

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3 Besides specifically determining in case no. D051460 that Woodall had not been denied access to the court by its failure to order his appearance for the hearing on the child custody/visitation issues, we also rejected Woodall's assertions that a pro per litigant does not have to meet the same standards as an attorney or a represented litigant and that the trial court erroneously construed his visitation motion as one for paternity.

party may be awarded a dissolution of the marital status and a division or confirmation of property without a declaration of fault for the failure of the marriage once the court has proper jurisdiction of the parties and the subject matter as in this case.

With regard to Woodall's separate argument that the trial court did not have jurisdiction on September 18, 2007 to hear his motion for reconsideration or to amend or modify the child custody/visitation motion because the court's original determination of that motion was then on appeal before this court, Code of Civil Procedure section 917.7 provides otherwise. (See *Mancini v. Superior Court* (1964) 230 Cal.App.2d 547, 554-556.)

In sum, this record, similar to the record in the earlier appeal in case no. D051460, does not reflect that Woodall was denied the opportunity to provide his views and support for them on any matter properly raised on this appeal. Nor has Woodall shown that the trial court lacked jurisdiction to dissolve the short-term marriage between him and Teeter or that it abused its discretion in doing so. Because Woodall has not identified any facts that could only have been presented at trial through live testimony regarding the marital status or his property rights, which were not already presented through his own declarations, and he does not get a "second bite of the apple" to challenge the child custody/visitation denial we have affirmed in case no. D051460, he also cannot show any conceivable "miscarriage of justice" by the court's entry of judgment of dissolution after the uncontested trial. (See *In re Jesusa V.* (2004) 32 Cal.4th 588, 624-625.)

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

NARES, J.